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GAMBLING COMMISSION  
COMM & LEGAL DIVISIONSTATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE WASHINGTON STATE GAMBLING COMMISSION

In The Matter Of:

NGOC M. NGUYEN  
Lynnwood, Washington

CRE License No: 68-25987

OAH Docket No. 2012-GMB-0042  
GMB No. CR 2012-00333INITIAL ORDER REVOKING  
GAMBLING LICENSE

## TRANSLATION INTO VIETNAMESE

If You Need A Vietnamese Translation Of This Decision, Call:  
Morales Dimmick at (208) 365-2622

Administrative Law Judge John M. Gray conducted an administrative hearing in this matter on June 20, 2013, at the Gambling Commission Office, 4565 7<sup>th</sup> Avenue, Lacey, Washington.

Kim O'Neal, Senior Counsel, Attorney General's Office, appeared and represented the Washington State Gambling Commission ("Commission"). Danny Lisa, Special Agent Supervisor, Gambling Commission, appeared and testified as the witness for the Commission. Julie Sullivan, Special Agent, Gambling Commission, was sworn and was prepared to testify. However, the parties stipulated to the authenticity of Exhibits 15 and 16 and that Ms. Sullivan's testimony was not needed.

Ngoc M. Nguyen ("Ms. Nguyen") appeared at the June 20 hearing. James A. Feldman, attorney at law, represented Ms. Nguyen. Ms. Nguyen had no other witnesses.

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All witnesses were sworn.

My-Khanh Nguyen appeared as a court certified interpreter in Vietnamese and English. Ms. Nguyen was sworn in as the interpreter in the case without objections from either party. The interpreter is no relation to the licensee, Ngoc Nguyen.

On June 25, 2012, the Director of the Commission caused two copies of a Notice of Administrative Charges and Opportunity for an Adjudicative Proceeding ("Notice of Administrative Charges") to be issued against Ms. Nguyen, one by regular mail and the other by certified mail. The Director alleged that, while playing as a customer at the Red Dragon Casino in Mountlake Terrace on January 6, 2012, Ms. Nguyen, a card room employee at the Great American Casino in Tukwila, switched her wager in Emperor's Challenge Pai Gow from the flat-rate main bet to the bonus wager after cards had been dealt. The Commission contends that her action was cheating and that Ms. Nguyen poses a threat to the effective regulation of gaming.

Ms. Nguyen signed and dated the Request for Administrative Hearing on July 3, 2012. The Commission received the Request for Administrative Hearing on July 6, 2012, seventeen (17) days after service on Ms. Nguyen.

ALJ Douglas Haake held a prehearing conference in this case on March 18, 2013, and he issued a Prehearing Conference Order on March 20, 2013. The hearing date was set for May 15, 2013, at 9 AM, at the Commission's hearing room in Lacey, Washington.

The Commission issued an Amended Notice of Administrative Charges and Opportunity for an Adjudicative Proceeding on April 18, 2013. Ms. Nguyen had previously requested a hearing, so there was no need for an additional filing from her.

Due to a change in representation of the Commission within the Attorney General's Office, the May 15 hearing was rescheduled. The Commission issued a Notice of Re-Scheduled Hearing on April 25, 2013, resetting the hearing on the merits for Thursday, June 20, 2013, beginning at 9 AM at the Commission's hearing room in Lacey, Washington.

On May 1, 2013, the undersigned Administrative Law Judge signed a Motion for Continuance and Agreed Order striking the May 15, 2013, hearing date.

At the hearing, the Commission offered twenty exhibits, numbered 1 through 20, all of which were admitted without objection. Exhibit 20 consists of two CD-R video disks containing views of Ms. Nguyen's gambling table from two different perspectives. The Commission offered a certified copy of the Snohomish County District Court docket that constitutes Exhibit 18, again without objection.

Ms. Nguyen offered no exhibits.

The Administrative Law Judge, having considered the evidence, now enters the following Findings of Fact:

#### FINDINGS OF FACT

1. Ms. Nguyen possesses a public card room employee license, no. 68-25987, issued by the Commission. The license is a type 68, Class B. Her license was set to expire on November 15, 2012. Exhibit 3. Ms. Nguyen previously held public card

room employee licenses, issued by the Commission, from 1999 through 2009 and in 2010. Exhibit 1, page 6.

2. Ms. Nguyen is, or was, employed by the Great American Casino in Tukwila, Washington as a card dealer. Exhibit 10, page 7.

3. On January 6, 2012, Ms. Nguyen played Emperor's Challenge Pai Gow (hereinafter, "ECPG") at the Red Dragon Casino in Mountlake Terrace, Washington.

4. The basic rules of the game of Emperor's Challenge Pai Gow is described as follows:

In ECPG the players and the dealer each receive seven cards. Before the player receives his/her cards the player must place a wager(s). The player has the option of placing one or two wagers. The first wager is the flat-rate main bet. This wager is mandatory and the payer is betting that his/her cards will be higher ranked poker hands than the dealer's. The second bet is optional and is a "Treasure Bonus" bet. If the player places a bonus bet he/she is betting that of the seven cards received, he/she will be able to create one of several qualifying predetermined five card poker hands. If the player has made a Treasure Bonus bet, it is paid odds depending on the hand. A full-house (3-of-a-kind along with 2-of-a-kind) pays 5-1. After the player receives his/her cards, the player then sets his/her cards into two hands, the "high" hand, consisting of five cards, and the "low" hand, consisting of two cards. When the player is done setting his/her hands, he/she places them in two separate piles face down. After all the players at the table have done this, the dealer then exposes the dealer's cards and sets them into the "high" and "low" hands. If both the player's hands are higher ranked poker hands than the dealer's, the player wins the bet. If both of the player's hands are lower than the dealer's hands, then the player loses the bet. If only one hand is higher and the other is lower, it is considered a "push" or tie. Once the player puts his/her hands face down and the dealer exposes his/her cards, the player can no longer touch his/her cards. Exhibit 10, page 4.

5. During the game that led to the allegation of cheating by Ms. Nguyen, she sat at the table and is visible on the copies of the surveillance videos. She sat as the

second player to the dealer's right; alternatively, she is visible on the left of the screen as seen by the viewer. This is known as "spot 2." Exhibit 20, "table overview" disk.

6. The Red Dragon Casino recorded the videos (Exhibit 20, two CD-R disks) in the normal course of its business operations on January 6, 2012. The videos show ECPG table no. 1 and depict Ms. Nguyen playing at ECPG table no. 1, spot 2. The Red Dragon Casino prepared the CD-R containing the overhead view on January 6, 2012. Special Agent Justin Chaput (formerly employed by the Commission and now by the Bellevue Police Department) took possession of the disk to the Commission on January 9, 2012. The Red Dragon Casino prepared another CD-R, from a camera set at another viewpoint, which Special Agent Chaput took possession of on January 26, 2012.

7. In the incident, Ms. Nguyen received her cards from the dealer. She read her cards and placed them on the table in front of her. She placed some of her cards directly on top of her chips, and the chips were placed on the "main bet" spot on the table in front of her. With her left hand holding the cards on top of the chips, she intentionally moved the chips from the main bet spot to the bonus spot. Exhibit 20, "table overview" disk at 18:45:88 (1:10 on the Windows Media Player counter). Exhibit 20, table overview disk.

8. The dealer disputed Ms. Nguyen's bet on the bonus spot. The dealer asked the floor supervisor to decide what to do. The floor supervisor reviewed the same video (the overhead view) that is in evidence in this case. The floor supervisor

decided that Ms. Nguyen placed her bet on the main bet and intentionally moved it to the bonus bet after she had looked at her cards.

9. Ms. Nguyen speaks little English and required the use of a Vietnamese interpreter at this hearing.

10. Ms. Nguyen has worked as a dealer in Washington casinos since 2007. Exhibit 10, page 7.

11. The Red Dragon Casino has a player tracking system that records such information as the name of the player (such as Ms. Nguyen), the dates she played at the casino, the time her data was entered into the player tracking system and the time she stopped playing, the amount of cash she gambled, and other such information. The casino uses this information to reward frequent players with food, drink, and similar prizes. Testimony of Danny Lisa.

12. Based on the data from the Red Dragon Casino's software system, Ms. Nguyen played games at the Red Dragon Casino 70 times between January 12, 2011, beginning at 6 AM, through January 12, 2012, ending at 5:59 AM. Of that 70 games, 39 games were Emperor's Challenge Pai Gow. Exhibit 9.

13. Ms. Nguyen knew that, under the rules of the game, she could not move her chips after she had she had seen her cards. Exhibit 10, page 7.

14. Danny Lisa is a Special Agent Supervisor ("SAS") employed by the Washington State Gambling Commission. He has worked at the Commission since 2003. He began work as a special agent and was promoted to supervisor approximately four years prior to the date of this hearing. He previously served as a



police officer for the Port of Seattle. He completed basic training at the Law Enforcement Officer Academy in 2001. He has had over 700 hours of training with the Commission. He has also taught classes on investigations and basic law enforcement to other Commission employees.

15. SAS Lisa prepared Case Report No. 2012-00333-A02. Exhibit 12. He also supervised former Special Agent Justin Chaput. Under SAS Lisa's supervision, Special Agent Chaput investigated the allegations against Ms. Nguyen and prepared Case Report No. 2012-00333 (Exhibit 1) and 2012-00034 (Exhibit 10). SAS Lisa approved Special Agent Chaput's case reports.

16. The Snohomish County Prosecutor's Office accepted the Commission's referral for prosecution of Ms. Nguyen and referred the report to its District Court Unit on or about May 15, 2012. Exhibit 11.

17. The Snohomish County Prosecutor's Office filed a gross misdemeanor charge of cheating (at gambling) in the second degree, a violation of RCW 9A.46.1962, in Snohomish County District Court Southern Division on June 17, 2012. As of the date of this hearing, there is no evidence of a final resolution of the criminal matter. Exhibit 18.

18. Ms. Nguyen did not notify the Commission that criminal charges had been filed against her.

19. On November 15, 2012, the Commission received Ms. Nguyen's cardroom employee renewal application. The application asked her if she had been charged with a crime in the past twelve (12) months. Ms. Nguyen checked the box marked "no." Exhibit 15.

20. The cardroom employee renewal application contains an oath, which states in relevant part:

I understand that I must notify the Gambling Commission if any information required on this application or on my Personal/Criminal History Statement changes or becomes inaccurate in any way. I understand that I must also notify the Gambling Commission should any criminal or civil actions be filed against me during the application or license period. (See WAC 230-03-055, 230-06-080, 230-06-085, and 230-06-090). I understand that if I fail to make such notification it may be grounds for suspension or revocation of my application or license(s). [See RCW 9.46.075(7) and WAC 230-03-085(7)]

21. My-Khanh Nguyen is a court-certified interpreter in Washington State courts of the Vietnamese and English languages and, as such, is qualified to serve as the interpreter in this case. Ms. Nguyen served as the interpreter in this case without objections from either party.

#### CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the Administrative Law Judge now enters the following Conclusions of Law:

1. The Commission originated this action when it filed and served the Notice of Administrative Charges on June 25, 2012, by mailing two copies to Ms. Nguyen, one by regular mail and the other by certified mail. Ms. Nguyen requested a hearing on the form provided by the Commission, which the Commission received on July 6, 2012. The final date for filing a timely request for a hearing was eleven (11) days after the mailing of the Notice of Administrative Charges. WAC 230-17-010(2) requires that the Commission receive the licensee's request for a hearing within either 23 days after service by regular mail or 20 days after service by certified mail. Therefore,



Ms. Nguyen timely filed her request for a hearing on the issues raised in the Notice of Administrative Charges.

2. The Commission originated this administrative action before Ms. Nguyen's gambling license would have expired, by its own terms, on November 15, 2012. The record is unclear whether the Commission renewed Ms. Nguyen's license after she filed her renewal application. Even if it expired on November 15, 2012, however, "once a professional disciplinary tribunal lawfully acquires jurisdiction over a proceeding, its jurisdiction continues until the proceeding is concluded." *Nims v. Washington Board of Registration*, 113 Wn. App. 499, 53 P.3d 52 (2002). This is so even though a gambling license is more in the nature of an occupational license rather than a professional license.

3. The Office of Administrative Hearings has jurisdiction to hear and initially decide this matter in an adjudicative proceeding. RCW 9.46.140; 34.05.413, 34.12.030(1), and WAC 230-17-025.

4. The Commission bases its proposed revocation of Ms. Nguyen's gambling license on the provisions of RCW 9.46.075(1), (8), and (9); RCW 9.46.153(1); RCW 9.46.1962 (the Commission recommended RCW 9.46.1961, a class C felony, to the prosecutor, but the prosecutor chose to file under RCW 9.46.1962, a gross misdemeanor); WAC 230-03-085(1), (3), and (8), and WAC 230-06-085(1). Conclusions of Law No. 5 through 10 contain the applicable language of these statutes and administrative rules.

5. RCW 9.46.075 is the Commission's legislative grant of authority to deny, suspend, or revoke gambling licenses or permits. "The commission may deny an application, or suspend or revoke any license or permit issued by it, for any reason or reasons, it deems to be in the public interest. These reasons shall include, but not be limited to, cases wherein the applicant or licensee, or any person with any interest therein:

(1) has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW and any amendments thereto, or any rules adopted by the commission pursuant thereto, or when a violation of any provision of chapter 9.46 RCW, or any commission rule, has occurred upon any premises occupied or operated by any such person or over which he or she has substantial control;

(8) fails to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of [chapter 9.46 RCW];

(9) Is subject to current prosecution or pending charges, or a conviction which is under appeal, for any of the offenses included under subsection (4) of this section: PROVIDED, That at the request of an applicant for an original license, the commission may defer decision upon the application during the pendency of such prosecution or appeal[.]

6. Ms. Nguyen has an affirmative obligation to come forward with clear and convincing evidence that it is qualified to possess a gambling license. RCW 9.46.153(1) declares that

It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence the necessary qualifications for licensure of each person required to be qualified under this chapter, as well as the qualifications of the facility in which the licensed activity will be conducted[.]

7. "Clear and convincing evidence" is a higher burden of proof than "preponderance of the evidence." See, *Hardee v. Department of Social and Health Services*, 172 Wn.2d 1, 6-18, 256 P.3d 339 (2011).

8. RCW 9.46.1962 provides, "A person is guilty of cheating in the second degree if he or she engages in cheating and his or her conduct does not constitute cheating in the first degree."

9. The Commission also relies on its administrative rules. WAC 230-03-085 states in plain language when the Commission will deny, suspend, or revoke an application, license or permit. "We [referring to the Commission] may deny, suspend, or revoke any application, license or permit, when the applicant, licensee, or anyone holding a substantial interest in the applicant's or licensee's business or organization:

- (1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075;

- (3) Has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level; or

- (8) Poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as demonstrated by:

- (a) Prior activities; or
- (b) Criminal record; or
- (c) Reputation; or
- (d) Habits; or
- (e) Associations[.]

10. WAC 230-06-085(1) and (2) provide: (1) "Licensees must report to us in writing within thirty days all criminal actions filed against the licensee, any manager of the licensed gambling activity, the business organization, or any person holding a substantial interest in the business organization[.]" and (2) "we must receive a copy of the final written decision or settlement within thirty days after the case is resolved."

11. The heart of Ms. Nguyen's argument is that on the cheating issue is that she moved her cards inadvertently and did not notice that she had done so. Regarding

the issue of her failure to disclose the existence of a criminal proceeding against her when she sought to renew her gambling license, she argues that she did not understand the form that she signed because she does not read English.

12. First, with regard to the cheating issue, the video of the game that occurred on January 6, 2012, convinces me that Ms. Nguyen intended to move her chips from the main bet spot to the bonus spot. Ms. Nguyen is an experienced card dealer and also has much experience playing the game of ECPG. I do not find her testimony credible that she did not realize where she had placed her chips. The video shows that she moved the chips with the cards that she held in her left hand. She moved the chips after she had seen her cards. I conclude that Ms. Nguyen intentionally moved her chips to the bonus bet after she had seen her cards.

13. Second, with regard to the "failure to disclose" issue, Ms. Nguyen argues that her inability to read and understand English is why she told the Commission that no charges had been filed against her in the previous twelve months. She also argues that is why she did not adequately understand the "oath of applicant" that appears on that form immediately above her signature. Ms. Nguyen cites no authority that her signature is any less valid, as an English-as-second-language person, than that of any other person who claims not to have understood what he or she signed. There is no evidence that she sought help from anyone who could assist her. There is no evidence that anyone, especially from the Commission, misrepresented to her what the renewal application meant. On the face of the renewal application, Ms. Nguyen represented to the Commission that no criminal proceedings had been initiated against her during the

past 12 months, and that she signed her name after reading and understanding the oath immediately above her signature.

14. I conclude that the Commission has proved by a preponderance of the evidence that Ms. Nguyen violated the statutes and administrative rules cited above and that she represents a threat to the effective regulation of gambling in this State.

15. I also conclude that Ms. Nguyen has failed to prove by clear and convincing evidence that she should continue to be licensed by the Commission.

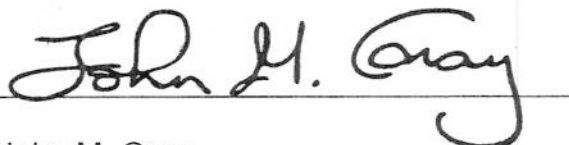
16. I conclude that Ms. Nguyen's gambling license should be revoked.

From the foregoing conclusions of law, NOW THEREFORE,

INITIAL ORDER

IT IS ORDERED That Ms. Nguyen's license, no. 68-25987, is REVOKED.

DATED at Tacoma, Washington, this 23 day of July, 2013.



John M. Gray  
Administrative Law Judge  
Office of Administrative Hearings

NOTICE TO THE PARTIES

Initial orders must be entered in accordance with RCW 34.05.461(3). WAC 230-17-085(1). An initial order becomes the final order unless a party files a petition for review of the initial order as explained in WAC 230-17-090. WAC 230-17-085(2). Petitions for review are governed by WAC 230-17-090:

"RCW 34.05.464 governs the review of initial orders." WAC 230-17-090(1).

"Any party to an adjudicative proceeding may file a petition for review of an initial order. "Parties must file the petition for review with us within twenty days of the date of service of the initial order unless otherwise stated. Parties must serve copies of the



petition to all other parties or their representatives at the time the petition for review is filed." WAC 230-17-090(2).

"Petitions must specify the portions of the initial order the parties disagree with and refer to the evidence in the record on which they rely to support their petition." WAC 230-17-090(3).

"Any party to an adjudicative proceeding may file a reply to a petition for review of an initial order. Parties must file the reply with us within thirty days of the date of service of the petition and must serve copies of the reply to all other parties or their representatives at the time the reply is filed." WAC 230-17-090(4).

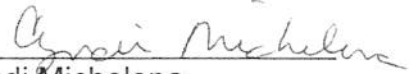
"Any party may file a cross appeal. Parties must file cross appeals with us within ten days of the date the petition for review was filed with us." WAC 230-17-090(5).

"Copies of the petition or the cross appeal must be served on all other parties or their representatives at the time the petition or appeal is filed." WAC 230-17-090(6).

"After we receive the petition or appeal, the commissioners review it at a regularly scheduled commission meeting within one hundred twenty days and make a final order." WAC 230-17-090(7).

#### CERTIFICATION OF MAILING

I certify that I mailed true and correct copies of the **Initial Order Revoking Gambling License** to the following parties, postage prepaid this 23 day of July 2013 at Tacoma, Washington.

  
Cyndi Michelena  
Legal Secretary

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